

## Office of Assistant Secretary for Housing, HUD

## § 206.3

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AUTHORITY: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

SOURCE: 54 FR 24833, June 9, 1989, unless otherwise noted.

### Subpart A—General

#### § 206.1 Purpose.

The purposes of the Home Equity Conversion Mortgage Insurance program are set out in section 255(a) of the National Housing Act, Public Law 73–

479, 48 STAT. 1246 (12 U.S.C. 1715z–20) (“NHA”).

[61 FR 49032, Sept. 17, 1996]

#### § 206.3 Definitions.

As used in this part, the following terms shall have the meaning indicated.

*Contract of insurance.* (See 24 CFR 203.251(j)).

*Day* means calendar day, except where the term *business day* is used.

*Estate planning service firm* means an individual or entity that is not a mortgagee approved under part 202 of this chapter or a housing counseling agency approved under § 206.41 and that charges a fee that is:

(1) Contingent on the homeowner obtaining a mortgage loan under this part, except the origination fee authorized by § 206.31 or a fee specifically authorized by the Secretary; or

(2) For information that homeowners must receive under § 206.41, except a fee by:

(i) A housing counseling agency approved under § 206.41; or

(ii) An individual or company, such as an attorney or accountant, in the *bona fide* business of generally providing tax or other legal or financial advice; or

(3) For other services that the provider of the services represents are, in whole or in part, for the purpose of improving an elderly homeowner's access to mortgages covered by this part, except where the fee is for services specifically authorized by the Secretary.

*Expected average mortgage interest rate* means the interest rate used to calculate the principal limit and the future payments to the mortgagor and is established based on the date on which the initial loan application is signed by the borrower. For fixed rate HECMs, it is the fixed mortgage interest rate. For adjustable rate HECMs, it is either the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury securities adjusted to a constant maturity of 10 years, or it is the sum of the mortgagee's margin plus the 10-year LIBOR swap rate, depending on which interest rate index is chosen by the mortgagor. The margin is determined by the mortgagee and is defined as the amount that is added to

the index value to compute the mortgage interest rate. The index type (i.e., CMT or LIBOR) used to calculate the expected average mortgage interest rate must be the same index type used to calculate mortgage interest rate adjustments—commingling of index types is not allowed (e.g., it is not permissible to use the 10-year CMT to determine the expected average mortgage interest rate and use the one-year LIBOR index to adjust the interest rate). The mortgagee's margin is the same margin used to determine the periodic adjustments to the interest rate.

*Home Equity Conversion Mortgage (HECM) counselor* means an individual who provides statutorily required counseling to clients who may be eligible for or interested in obtaining an FHA-insured HECM. This counseling assists elderly homeowners who seek to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

*Insured mortgage* means a mortgage which has been insured as evidenced by the issuance of a mortgage insurance certificate.

*LIBOR* means the London Interbank Offered Rate.

*Maximum claim amount* means the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act) as of the date of loan closing. Closing costs must not be taken into account in determining appraised value.

*MIP.* (See 24 CFR 203.251(k)).

*Mortgage* means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a condominium, the term *mortgage* means a first lien covering a fee interest or eligible leasehold interest in a one-family unit in a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and

facilities as may be designated. The term refers to a security instrument creating a lien, whether called a *mortgage*, *deed of trust*, *security deed*, or another term used in a particular jurisdiction. The term *mortgage* also includes the credit instrument, or note, secured by the lien, and the loan agreement between the mortgagor, the mortgagee and the Secretary.

*Mortgagee.* (See section 255(b)(2) of NHA).

*Mortgagor* means each original borrower under a mortgage. The term does not include successors or assigns of a borrower.

*Principal limit* means the maximum disbursement that could be received in any month under a mortgage, assuming that no other disbursements are made, taking into account the age of the youngest mortgagor, the mortgage interest rate, and the maximum claim amount. Mortgagors over the age of 95 will be treated as though they are 95 for purposes of calculating the principal limit. The principal limit is used to calculate payments to a mortgagor. It is calculated for the first month that a mortgage could be outstanding using factors provided by the Secretary. It increases each month thereafter at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of one-half percent per annum, if the mortgage was executed on or after May 1, 1997. If the mortgage was executed before May 1, 1997, the principal limit increases each month at a rate equal to one-twelfth of the expected average mortgage interest rate plus one-twelfth of one-half percent per annum. The principal limit may decrease because of insurance or condemnation proceeds applied to the mortgage balance under § 209.209(b) of this chapter.

*One-month Constant Maturity Treasury (CMT) Index* means the average weekly yield of U.S. Treasury securities adjusted to a constant maturity of one month.

*Principal residence* means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time.

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## § 206.15

*Secretary.* (See 24 CFR 5.100).

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 59 FR 50464, Oct. 3, 1994; 60 FR 42759, Aug. 16, 1995; 61 FR 36266, July 9, 1996; 61 FR 49032, Sept. 17, 1996; 62 FR 12953, Mar. 19, 1997; 62 FR 30227, June 2, 1997; 64 FR 2987, Jan. 19, 1999; 72 FR 40050, July 20, 2007; 73 FR 1436, Jan. 8, 2008; 74 FR 45316, Sept. 2, 2009]

### § 206.7 Effect of amendments.

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to subparts B and C of this part will not adversely affect the interests of a mortgagee on any mortgage to be insured for which either the Direct Endorsement mortgagee or Lender Insurance mortgagee has approved the mortgagor and all terms and conditions of the mortgage, or the Secretary has made a commitment to insure. Such amendments will not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where the Secretary makes payments to the mortgagor.

[62 FR 30227, June 2, 1997]

### § 206.8 Preemption.

(a) *Lien priority.* The full amount secured by the mortgage shall have the same priority over any other liens on the property as if the full amount had been disbursed on the date the initial disbursement was made, regardless of the actual date of any disbursement. The amount secured by the mortgage shall include all direct payments by the mortgagee to the mortgagor and all other loan advances permitted by the mortgage for any purpose including loan advances for interest, taxes and special assessments, premiums for hazard or mortgage insurance, servicing charges and costs of collection, regardless of when the payments or loan advances were made. The priority provided by this section shall apply notwithstanding any State constitution, law or regulation.

(b) *Second mortgage.* If the Secretary holds a second mortgage, it shall have a priority subordinate only to the first mortgage (and any senior liens per-

mitted by paragraph (a) of this section).

[61 FR 49033, Sept. 17, 1996]

## Subpart B—Eligibility; Endorsement

### § 206.9 Eligible mortgagees.

(a) *Statutory requirements.* (See section 255(b)(3) of NHA).

(b) *HUD approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under part 202 of this chapter, except an investing mortgagee approved under § 202.9 of this chapter, is eligible to apply for insurance. A mortgagee approved under §§ 202.6, 202.7, 202.9 or 202.10 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 57 FR 58350, Dec. 9, 1992; 60 FR 42759, Aug. 16, 1995; 61 FR 36266, July 9, 1996; 61 FR 49033, Sept. 17, 1996; 62 FR 20088, Apr. 24, 1997]

### § 206.13 [Reserved]

### § 206.15 Insurance.

Mortgages originated under this part must be endorsed through the Direct Endorsement program under § 203.5 of this chapter, or insured through the Lender Insurance program under § 203.6 of this chapter, except as provided in §§ 203.1 or 203.4 of this chapter. The mortgagee must submit the information as described in § 203.255 (b) or (f) of this chapter, as applicable; the certificate of housing counselling as described in § 206.41; a copy of the title insurance commitment satisfactory to the Secretary (or other acceptable title evidence if the Secretary has determined not to require title insurance under § 206.45(a)); the mortgagee's election of either the assignment or shared premium option under § 206.17; and any other documentation required by the Secretary. Section 203.255 (c), (d), (e), and (f) of this chapter, pertaining to the processes for Direct Endorsement and Lender Insurance, apply to mortgages under this part. If the mortgagee has complied with the requirements of §§ 203.3, 203.4, 203.5, 203.6, and 203.255 of this chapter (as applicable), and the requirements of this part, and the mortgage is determined to be eligible, the